

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In Re:	§	Chapter 11
	§	
W.R. GRACE & CO., et al.,	§	Jointly Administered
	§	Case No. 01-01139 (JKF)
Debtors.	§	
	§	

**FEE AUDITOR'S FINAL REPORT REGARDING
FEE APPLICATION OF PACHULSKI STANG ZIEHL & JONES, LLP
FOR THE TWENTY-SEVENTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Twenty-Seventh Interim Fee Application of Pachulski Stang Ziehl & Jones, LLP (the “Application”).

BACKGROUND

1. Pachulski Stang Ziehl & Jones, LLP (“Pachulski”), was retained as counsel to the Debtors. In the Application, Pachulski seeks approval of fees totaling \$127,026.50 and expenses totaling \$141,525.69 for its services from October 1, 2007 through December 31, 2007 (the “Application Period”).
2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2006, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under

11 U.S.C. § 330, Issued January 30, 1996 (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Pachulski, and received a response from Pachulski, portions of which response are quoted herein.

DISCUSSION

3. In our initial report, we noted that Pachulski billed 2.6 hours for \$461.00 in fees for the following sets of identical or similar time entries:

11/28/07	PEC	Serve [Signed] Order (CONTINUATION) Regarding the Debtors' Eighteenth Omnibus Objection to Claims (Substantive) (.2); Draft Affidavit of Service and prepare for filing (.2).	0.4	\$180.00	\$72.00
11/28/07	PEC	Serve [Signed] Order (CONTINUATION) Regarding the Debtors' Eighteenth Omnibus Objection to Claims (Substantive) (.2); Draft Affidavit of Service and prepare for filing (.2).	0.4	\$180.00	\$72.00
11/28/07	PEC	Serve [Signed] Order (CONTINUATION) Regarding the Debtors' Eighteenth Omnibus Objection to Claims (Substantive) (.2); Draft Affidavit of Service and prepare for filing (.2).	0.4	\$180.00	\$72.00
11/9/07	MLO	Prepare Third Quarterly Fee Application of Ogilvy Renault for filing and service (.3); draft certificate of service re: same (.1); coordinate filing of same (.1); prepare and execute service of same (.2).	0.7	\$175.00	\$122.50
11/9/07	MLO	Prepare Third Quarterly Fee Application of Ogilvy Renault for filing and service (.3); draft certificate of service re: same (.1); coordinate filing of same (.1); prepare and execute service of same (.2).	0.7	\$175.00	\$122.50
				<u>2.6</u>	<u>\$461.00</u>

Thus, we asked Pachulski to review these time entries, and advise whether any of them were duplicates. Pachulski responded as follows:

For time keeper PEC we provide the following response to Item No. 3:

1. First entry is correct.
2. Second entry should be listed as: Serve [Signed] Order Regarding the

Debtors' Twenty-Fourth Omnibus Objection to Claims (Substantive) (.2); Draft Affidavit of Service and prepare for filing (.2)

3. Third Entry should be listed as: Serve [Signed] Order Regarding Relief Sought in Debtors' Objection to Claim Filed By the Massachusetts Department of Revenue (.2); Draft Affidavit of Service and prepare for filing (.2)

For time keeper MLO we provide the following response to Item No. 3:

As far as the duplicate time entries re: the Ogilvy Renault fee application - one of the entries is correct; the other should be for the July 2007- September 2007 Quarterly Fee Application of Casner & Edwards ---the entry should read: 11/9/07 MLO .7 -- Prepare July 2007 - September 2007 Quarterly Fee Application of Casner & Edwards for filing and service (.3); draft certificate of service re: same (.1); coordinate filing of same (.1); prepare and execute service of same (.2)

We accept Pachulski's response and have no objection to these fees.

4. In our initial report, we noted that during the Application Period, Timekeeper MLO, billing at an hourly rate of \$175.00, spent 7.60 hours for \$1,330.00 in fees on work which appeared to be filing. The time entries are listed on Exhibit "A." On the issue of adjusting rates downward, we find persuasive the opinion expressed by the Honorable Judith K. Fitzgerald in *In re USG Corporation*, Case No. 01-2094 (JKF), Transcript of Proceedings, August 29, 2005, pp. 49-52, wherein the Court opined that \$160.00 per hour for file maintenance, even if performed electronically, was too high, and that \$60.00 to \$100.00 per hour for this service was more appropriate. We have been consistent in recommending that filing be billed at no more than \$80.00 per hour. Thus, we asked Pachulski to explain why this time should not be compensated at a reduced hourly rate. Pachulski responded as follows:

These time entries actually involve more duties than just organizing documents to a file. It also includes: review daily filing of pleadings and verify service regarding same, check pleadings for critical dates or deadlines, and maintain shadow files regarding fee applications and CNOs in order to track dates for filing CNOs. The description is an abbreviated version of what duties I am actually completing.

We understand Timekeeper MLO to be saying that only a portion of the time spent was for filing. However, we have no way of determining the amount of time spent on filing versus the other tasks performed by Timekeeper MLO. Moreover, as a general rule we afford greater weight to contemporaneous time entries than reconstructions of past events, and thus while we appreciate the additional explanation provided by Timekeeper MLO, the plain meaning of the contemporaneous time entries indicates that this activity was filing. There is authority in this district for adjusting rates downward for routine tasks. “Routine tasks, if performed by senior partners in large firms, should not be billed at their usual rates. A Michelangelo should not charge Sistine Chapel rates for painting a farmer’s barn.” *Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3rd Cir. 1983). We think the same can be said of routine tasks performed by paralegals. Thus, we recommend that Timekeeper MLO’s time be reduced to \$80.00 per hour for the time entries listed above, for a reduction of \$722.00 in fees.

CONCLUSION

5. Thus, we recommend approval of \$126,304.50 in fees (\$127,026.50 minus \$722.00) and \$141,525.69 in expenses for Pachulski’s services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 
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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 6th day of June, 2008.


Warren H. Smith

SERVICE LIST
Notice Parties

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EXHIBIT A

12/3/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
12/4/07	MLO	Organize documents to file.	0.3	\$175.00	\$52.50
12/5/07	MLO	Organize documents to file.	0.3	\$175.00	\$52.50
12/6/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
12/7/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
12/10/07	MLO	Organize documents to file.	0.3	\$175.00	\$52.50
12/11/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
12/12/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
12/14/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
12/17/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
12/18/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
12/19/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
12/20/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
12/27/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
12/28/07	MLO	Organize documents to file.	0.3	\$175.00	\$52.50
11/1/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
11/2/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
11/8/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
11/13/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
11/14/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
11/15/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
11/16/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
11/20/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
11/21/07	MLO	Organize documents to file.	0.3	\$175.00	\$52.50
11/26/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
11/28/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
11/29/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/1/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/3/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
10/8/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/9/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
10/10/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/11/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/12/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
10/15/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50
10/16/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/18/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/19/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/22/07	MLO	Organize documents to file.	0.3	\$175.00	\$52.50
10/23/07	MLO	Organize documents to file.	0.1	\$175.00	\$17.50

10/29/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/30/07	MLO	Organize documents to file.	0.2	\$175.00	\$35.00
10/31/07	MLO	Organize documents to file.	0.3	\$175.00	\$52.50
			<u>7.6</u>	<u>7.6</u>	<u>\$1,330.00</u>